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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 22.2.2021

% **Pronounced on : 26.03.2021**

\+ **BAIL APPLN. 3696/2020**

AMRESH MISHRA ..... Petitioner

Through: Mr. Ajay Majithia, Advocate.

versus

GOVT. OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Mukesh Kumar, APP for the State with SI Bhawani PS Prasad Nagar and SI Ranvir Singh PS DBG Road.

Ms. Rebecca John, Sr. Advocate with Ms. Manish Parmar, Advocate for the complainant

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

O R D E R

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No. 255/2019 under Sections 420/406/120-B IPC registered at Police Station Prasad Nagar, Delhi.

2. In brief the facts of the case are that the complainant and his wife were interested in purchasing an immovable property in South Delhi in the name of the wife of the complainant i.e Mrs. Anju Gupta. One Vishnu Bhagat introduced the complainant to the applicant/accused and the

applicant/accused help the complainant to zero-in upon the property belonging to one Shubham Dubey. Assurance was given to the complainant that the property was free from all encumbrances and on that assurance given by the applicant/accused and said Shubham Dubey, a deal was struck for the purchase of the property for a sum of Rs.1.35 crores. In this regard, an agreement to sell was duly executed between said Shubham Dubey and the wife of the complainant, and 22.8.2019 was fixed as the date for execution of the Sale Deed in favour of the wife of the complainant i.e Mrs. Anju Gupta at the office of Sub-Registrar, Mehrauli. The draft sale deed was also approved by the parties and the stamp papers worth Rs.5,40,000/- were duly purchased by Mrs. Anju Gupta but no sale deed could be executed on 22.8.2019 for certain reasons shown by Shubham Dubey. Thereafter, 3.9.2019 was fixed for execution of the sale deed and on the said date Shubham Dubey came to the office of Sub-Registrar along with one Vikramjeet Sheriya and requested the complainant to transfer the consideration amount in his bank before the execution of the sale deed. Therefore, a sum of approximately Rs.1.33 crores was transferred from the bank of Mrs. Anju Gupta to the bank account of Shubham Dubey, and thereafter, Shubham Dubey and Vikramjeet Sheriya vanished from the office of the Sub-Registrar without executing any sale deed. According to the complainant, the applicant/accused Amresh Mishra assured him that either he would get the property transferred in favour of Mrs. Anju Gupta or he would facilitate the return of the amount paid to the said Shubham Dubey. It is alleged against the applicant/accused that he is the main conspirator and he has played fraud upon the complainant and his wife with his accomplices namely Shubham Dubey and Vikramjeet Sheriya.

3. It is submitted by the counsel for the petitioner that he has been falsely implicated in the present case and petitioner has filed a complaint dated 23.9.2019 with P.S.Prasad Nagar vide DD No.41 dated 3.9.2019 disclosing the facts even before the registration of the present FIR but no action has been taken on his complaint. He further submits that actual fraud has been played upon the complainant by Shubham Dubey and Vikramjeet Sheriya. It is further submitted that wife of the complainant has instituted a suit being Civil Suit No. 319/2019 for specific performance and permanent injunction in the court of District and Sessions Judge, and in that suit the applicant has not been impleaded as a party, which clearly shows that the complainant has no grudge and case against the petitioner. It is further submitted that the custodial interrogation of the petitioner is not required. It is further submitted that petitioner has joined the investigation as and when directed by the IO.

4. On the other hand, it is submitted by learned APP that the allegations against the petitioner are grave and serious in nature. He submits that during the course of investigation NBWs were obtained against the petitioner. It is further submitted that after the scrutiny of the bank statement of account no. 307402010560609 of co-accused Shubham Dubey, it was revealed that cheated amount was immediately transferred into the account of accused Vikramjeet Sheriya and the same was further transferred to different bank accounts. He further submits that the accused Shubham transferred some amount to the account of the petitioner's daughter's firm, namely, Samar Handicrafts and some amount was also withdrawn as cash from the account of accused Vikramjeet Sheriya . It is further submitted that during the course of investigation, the co-accused Vikramjeet Sheriya has disclosed that he

had divided the money and given Rs.45-45 lacs in cash to both the accused persons, namely, the present petitioner and Shubham Dubey as their shares. It is further submitted by learned APP that on 5.10.2020 the applicant/accused submitted reply of notice under Section 91 Cr.P.C but failed to provide relevant information and documents. It is further submitted by learned APP that he was interrogated in the presence of his Advocate but there were several contradictions in the statement. It is further submitted that the wife of the applicant/accused and Shubham availed a loan of Rs.4.5 crores in the year 2018 from Allahabad Bank in respect of the property in question in the name of the firm M/s Sadhana Exports through its partners Nivedita Mishra (wife of the applicant) and Shubham Dubey, and this fact was not brought to the notice of the complainant which corroborates that the applicant/accused and Shubham Dubey are well connected and part of conspiracy. It is further submitted that the applicant/petitioner since he was under the protection of the Court, has not cooperated in the investigation and has given misleading answers. It is further submitted that during the meeting between the accused and the complainant the applicant/accused was present during those meetings. It is further submitted that petitioner is involved in many other similar type of cases and proceedings under Section 82 Cr.P.C have already been initiated against him.

5. Petitioner is involved in four similar types of cases and proceedings under Section 82 Cr.P.C has already been initiated against him. Counsel for the petitioner has argued that the petitioner has made a complaint dated 23.9.2019 against Shubham Dubey and Vikramjeet Sheriya alleging that they have cheated the complainant. This fact was verified, and on verification, it was found that accused has only tried to mislead the police

and the said complaint has now been disposed of, and no action has been taken by the police on the complaint of the accused. A loan of Rs.4.5 crores was taken on the property in question and the borrowers were M/s Sadhana Exports through its partners Nivedita Mishra (wife of the applicant) and co-accused Shubham Dubey. The said loan became NPA and when the bank was proposing to acquire the said property, it was alleged that the petitioner/applicant, along with the other co-accused hatched a conspiracy and sold the property in question to the complainant and received Rs.1.33 crores through RTGS. The applicant/petitioner was aware about the bank loan and the mortgage of the property in question with the Allahabad Bank as his wife was one of the partners in the said firm i.e M/s Sadhana Exports which has obtained the loan by mortgaging the property in question with the bank. The allegations against the petitioner are grave and serious in nature. Petitioner does not have clean past antecedents. Custodial interrogation of the petitioner is required in order to recover cheated amount and to complete the investigation as petitioner is not joining the investigation.

6. Therefore, the application seeking anticipatory bail, filed by the petitioner is dismissed.

7. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

MARCH 26, 2021/ib